FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM 1943

No. 211

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON, G. STEBBINS and F. WALSH,

Petitioners,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

HARRY POLIKOFF,
Counsel for Petitioners.

INDEX

TABLE OF CASES

IN THE

Supreme Court of the United States

OCTOBER TERM 1943

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON, G. STEBBINS and E. WALSH,
Petitioners,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners herein respectfully pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia entered in the case of Delbert O. Stark et al. v. Claude R. Wickard, Secretary of Agriculture of the United States, No. 8343, under date of June 14, 1943.

Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia, per Miller, Associate Justice, June 14, 1943, is not yet reported. This opinion affirms the decision of the United States District Court for the

District of Columbia, per Adkins, District Judge, delivered May 27, 1942, from the bench and unreported (appearing in the record below, Appellants' Appendix, p. 24), dismissing the complaint.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended; 28 U. S. C. A., Sec. 347(a).

Questions Presented

1. Did the court below err in holding that no legally protected rights of milk producers are violated by the Secretary of Agriculture, who, purporting to act under the Agricultural Marketing Agreement Act of 1937, makes unauthorized disbursements from the Producer Settlement Fund created for such producers pursuant to said Act and prevents producers from receiving the lawful minimum price under the Act as provided in their contracts with milk handlers?

2. Does the Agricultural Marketing Agreement Act of 1937 authorize the Secretary of Agriculture to make payments out of the Producer Settlement Fund to certain cooperative corporations, as provided in Sec. 904.9 of Order No. 4 as amended?

Statute Involved

The statute involved herein is the Agricultural Marketing Agreement Act of 1937; Act of June 3, 1937, 50 Stat. 246, Sec. 8c, 7 U. S. C. A., Sec. 608c. The official compilation of this statute is attached to the Appendix for Appellants below.

Statement

This action was commenced by five dairy farmers (petitioners) resident in the northern New England milkshed, whose milk is marketed in the Boston area. The respondent is the Secretary of Agriculture, who issued Order No. 4 as amended (7 F. Reg. IX, Sec. 904.0) under the Agricultural Marketing Agreement Act of 1937 (generally referred to hereinafter as "the Act of 1937") (Act of June 3, 1937; 50 Stat. 246; 7 U. S. C. A., Sec. 601 et seq.) regulating the handling of milk in the greater Boston market and the prices to be paid by handlers for milk purchased from petitioners and other producers. A copy of Order No. 4 as amended (generally referred to as "the Order") appears as Exhibit A of the complaint (see Appendix below).

A feature of Order No. 4 as amended is the "equalization pool" or "Producer Settlement Fund". Handlers are required by the Act to pay for their milk at minimum prices according to whether it is used for distribution as fluid milk (Class I) or in manufactured dairy products (Class II); the Class I price is substantially higher than the Class II price (and reflects the higher resale value of fluid milk per unit). A uniform or blended price is returned by all handlers to all producers without regard to the use to which their milk is devoted by each handler. Such blended or average price is computed each month by dividing the total value of Class I milk and Class II milk sold by all the handlers by the total volume of both classes of milk. Payment into the equalization pool or Producer Settlement Fund is made by handlers for producers in all cases where the handler's obligation to producers for milk at the minimum price of the class used by him is greater than such blended price. Distribution of a uniform price to all producers by handlers is then made through the pool or fund as operated by a Market Administrator, agent of the Secretary respondent.

The complaint avers that, effective August 1, 1941, an amendment to Order No. 4 provided that a deduction (of 1½ to 5 cents per cwt. of milk) be made from the pool and in computing the blended price, and further provided that the funds thus subtracted should be paid by the Market Administrator to any cooperative association engaged in certain marketing activities and which the Secretary of Agriculture certified as qualified within certain requirements set forth in Sec. 904.9 of the Order. It is also averred that by the expenditure and deduction from the Producer Settlement Fund for these payments, the Secretary has caused the petitioners to be paid a price for their milk below the minimum which they are required to be paid under the Act, causing a loss of $60,000 annually to them and other producers in their class.

The petitioner producers are not members of any cooperative. On their own behalf and on behalf of others similarly situated, they allege that these payments are unauthorized by the Act, and pray that the Secretary of Agriculture be enjoined from qualifying or certifying any cooperatives therefor or, to the extent that any have been so qualified, that he revoke such qualification.

The case first arose in the United States District Court for the District of Columbia upon motion for a temporary injunction, which was denied by Jesse C. Adkins, J. Thereafter the Government moved for summary judgment under Rule 56 (F. R. C. P.), which motion was denied by Daniel W. O'Donoghue, J., who directed an answer on the merits. The answer included as the first defense that the complaint failed to state a cause of action. The plaintiffs (petitioners here) filed a motion for preliminary hearing upon the first defense, under Rule 12(d) (F. R. C. P.); after argument thereon, judgment was entered by Jesse C. Adkins, J., dismissing the complaint. From such judgment, appeal was taken to the court below.

Reasons for Granting the Writ

1. The case involves substantial federal questions of general importance.

(a) Under the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture presently has in effect 13 orders regulating the handling of milk in 13 marketing areas supplied by approximately 103,215 dairy farmers or milk producers, which orders authorize Producer Settlement Funds (equalization pools) for milk sold and valued in the aggregate at $279,459,645.93 during 1942. The decision below immediately affects adversely all such milk producers, holding that they have no legal or equitable interest in the Producer Settlement Fund, paid by handlers for the milk purchased by them directly from such producers.

It has been settled that handlers have no interest in the Producer Settlement Fund (*United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533), and it has never been contended that the Government has any proprietary right or ownership therein; hence, the instant case involves whether the Agricultural Marketing Agreement Act of 1937 destroys all rights of property, particularly the rights of the above milk producers, in the specific proceeds of nearly 11 billion pounds of milk produced and sold by them in many of the most important cities of the nation, placing vast sums subject to the possession of agents of the Secretary of Agriculture but beyond protection by any person seeking judicial restraint or redress against diversion thereof to unlawful purposes.

The general importance of this case is to be judged not only by the above markets immediately affected thereby, but also by the many additional markets which are now or in the future may be regulated under the Act of 1937, and in which the Secretary has the authority to establish a Producer Settlement Fund. Furthermore, at least 20 states

have statutes regulating prices in the milk industry, some of which authorize (*Milk Control Board* v. *Crescent Creamery, Inc.*, 14 N. E. [2d] 588 [Ind.], app. dis'd 59 Sup. Ct. 87) similar producer settlement funds. Therefore, the case is of general importance to the entire dairy industry of the United States, and directly so to over 2,000,000 dairy farmers who by the decision below are or may be deprived of all property interest in the specific proceeds of their own milk sold and delivered by them.

(b) Having decided that the petitioners have no standing to complain, the court below refrained from deciding whether the Act of 1937 authorizes the Secretary to make payments out of the Producer Settlement Fund to certain private cooperative corporations, for alleged services rather than for milk sold. In two of the largest milk markets the Secretary has already directed and caused payments to be made out of the Producer Settlement Fund to such private corporations: in the Greater Boston Milk Marketing Area, involved in the instant case, such payments totalled $177,523.60 during 1942; in the New York Metropolitan Milk Marketing Area, $1,087,608.18. However, there is no statutory limit on the amount, manner or purpose of such payments; therefore, the importance of this question rests in the fact that if the authority exists, or if the decision of the court below stands, vast millions of dollars paid by handlers for milk sold and delivered by producers become subject to disbursement in any amount to private corporations, at the expense of such producers (whether or not they are members or stockholders of such corporations).[1] To the extent that the Producer Settlement Fund in each market is depleted by such payments, the dairy farmers of the nation must remain unpaid for the milk which they have produced, sold and delivered.

[1] Although producers are entitled to express approval or disapproval of a marketing order under Sec. 8c(9)(B) of the Act of 1937, it is significant that a cooperative corporation is permitted to vote in lieu of its members under Sec. 8c(12) thereof.

2. The questions involved have not been, but should be, decided by this Court.

(a) The constitutionality of the equalization provision of the Act of 1937, Sec. 8c(5)(B)(ii), was sustained by this Court in *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, and *H. P. Hood & Sons* v. *United States*, 307 U. S. 588. In the former case, defendant handlers attempted to attack the authority of the Secretary to effectuate Order No. 27, Art. VII, Sec. 5, directing payments to cooperative associations of the New York area. This Court held that "Whether cooperative or not, the defendant corporations have no financial interest in the producer settlement fund" (at 561) because "only producers are affected by the use of the pooled money" (at 560; see also 561). Thus, this Court has strongly indicated that producers have an interest in the Fund, but did not decide the point because producers were not parties to the action.

(b) No federal court other than that below will have jurisdiction to rule upon the questions involved: due to the necessity of securing jurisdiction over the Secretary of Agriculture, a producer must proceed in the District of Columbia. The Secretary having no authority under the Act to sue milk producers, and producers having no authority to petition for administrative review, they have no method of testing the issue by way of defense or otherwise in any other jurisdiction. Because the statute involved regulates an essential industry, national in importance and in territorial extent (cf. *Muncie Gear Works, Inc.* v. *Outboard Marine & Mfg. Co.*, 315 U. S. 759), it is submitted that the law of the land should be pronounced by this Court.

3. The court below has not given proper effect to applicable decisions of this Court.

(a) The court below aptly quoted the principle stated by this Court in *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118, at 137-138, that plaintiffs must establish "a legal right—one of property, one arising out

of contract, one protected against tortious invasion or one founded on a statute which confers a privilege". But the court thereafter misconceived of the petitioners' "rights to receive the minimum prices" in their contracts with handlers without unlawful interference by the Secretary, and of petitioners' claim to "standing to protect their own property" interest as equitable owners of the Producer Settlement Fund, as "assuming a right 'founded on a statute which confers a privilege' ". Hence, the court below improperly applied the foregoing case, *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, and other cases below noted; the court also failed to give effect to applicable decisions of this Court herein discussed.

This Court has held that a person—purporting to act as an official—who interferes with performance of a contract of employment invades a legally protected interest and may be enjoined by the party discharged from such employment, *Truax* v. *Raich*, 239 U. S. 33, or by both parties, *Adkins* v. *Children's Hospital*, 261 U. S. 525. It has also been held that a person—purporting to act as an official—who interferes with performance of a contract for purchase and sale of lodging and schooling through causing cancellation by one party thereto, invades a legally protected interest of the other party and may be enjoined: *Pierce* v. *Society of Sisters*, 268 U. S. 510. This Court also has held that a person—purporting to act as an official—who interferes with performance of a contract for the purchase and sale of syrup by preventing one party from retaining possession of the goods delivered thereunder invades a legally protected interest of the other and may be enjoined by him; *Scully* v. *Bird*, 209 U. S. 481, 489. The instant case is similar: the respondent—purporting to act as an official—has interfered with performance of a contract for the purchase and sale of milk by preventing one party from fully paying the other therefor (by unlawfully diverting part of the proceeds to certain corporations); in so doing he has invaded a legally protected interest of the other and may be enjoined by him.

The court below, in stating that the petitioners' "only right with respect to it (the Fund) is that which they may assert against the handlers, under their contracts", failed to apply the above decisions; it overlooked that rights under a contract are indeed contract rights between the parties thereto, *but are "private legally protected" property rights as to third persons,* which rights will be protected against interference or invasion by third parties, whether private persons or officials acting beyond their authority. This Court has held: "Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property"; *Coppage* v. *Kansas,* 236 U. S. 1, at 14; *Adkins* v. *Children's Hospital,* 261 U. S. 525. That the right to make a contract includes the right to receive performance thereunder is implicit in each of the five cases last cited.[2] Obviously, the petitioners' "rights to receive the minimum prices" under their contracts should not be deemed as "founded on a statute which confers a privilege": the *privilege* and benefit of a minimum price fixed by law are vastly different from the contract *right* to receive payment for milk sold, albeit payment can only be made at the legal minimum. Petitioners herein, instead of attacking the benefit of the legal minimum (*Wallace* v. *Ganley,* 95 F. [2d] 364, relied upon below), seek to protect their right to be paid for their milk; certainly this fundamental right has not been destroyed by a law which merely forbids the making of a contract at less than a minimum price.

The decisions of this Court most heavily relied upon[3] below are clearly inapplicable, because there the complain-

[2] Although these cases involve state legislation, the protection for such right is similar under both the Fifth and the Fourteenth Amendments: *Curry* v. *McCanless,* 307 U. S. 357, at 369-370; *Crowell* v. *Benson,* 285 U. S. 22, at 42.

[3] The *Tennessee Power* and *Lukens Steel* cases were cited or quoted twice below; but since each was relied upon twice again in the passage quoted below from *Associated Industries of New York State* v. *Ickes,* 134 F. (2d) 694, 700, it may be said that each case was applied four times below to the instant case. Interestingly, of the nine other decisions cited in the opinion below in Footnote 6 but not discussed, the plaintiffs in eight were held to have standing to sue.

ants had no rights to protect from the alleged interference: *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118, at 139, held that the plaintiff's "local franchises, while having elements of property, confer no contractual or property right to be free of competition". *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, held that the plaintiffs possessed no right to bid for Government contracts free from compliance with wage determinations made by the Secretary of Labor pursuant to a statute regulating procedure by the Government as a proprietor, "keeping its own house in order" (at 127) in the procurement of its supplies.

(b) The petitioners have and aver (Complaint, Par. 3, Appellants' Appendix, p. 4, below) "contracts (with handlers) for sale and purchase of milk", as found by the court below. As acknowledged by the Government (Appellee's Brief, p. 16, below), it is immaterial whether such contracts are written or oral, express or implied. It is a contract for the sale of milk in which, other evidence and averments absent, there can be but one price: the price prescribed by law; and this, of course, means the price lawfully prescribed. As petitioners aver (Complaint, Par. 14, Appellants' Appendix, p. 9) they should "be paid in accordance with the provisions of said Agricultural Marketing Agreement Act of 1937" and "are entitled to be paid the blended price computed without deduction for such unlawful payments" to private cooperative associations. Since "the minimum price is paid to the producers through the payment of the uniform price" or blended price (*United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, at 562), it is immaterial (as the respondent conceded below, Appellee's Brief, p. 16) whether the contracts herein be considered as requiring payment of a lawful minimum class price or a lawful uniform or blended price. The contract must be at the lawful price, because by statute it could not lawfully be for less; and in the absence of agreement thereon it could not be for more.[4]

[4] Cf. Maximum Price Regulation, No. 329, effective February 16, 1943, issued under the Emergency Price Control Act of 1942; Act of Jan. 30, 1942; 56 Stat. 23; 50 U. S. C. A. App., Sec. 901.

(c) Since the petitioners admittedly had the right and did contract to sell milk at the lawful price, it follows that the respondent Secretary, in ordering handlers under duress of imprisonment (Sec. 8c(14)) to pay his agent the monies constituting part of such price by certifying that certain corporations should be paid such monies, has interfered with the petitioners' right to receive lawful performance of their contracts. The handlers actually have paid out a sum equal to the lawful price, but the petitioner producers have not received it in full because part was diverted to third persons upon order of the respondent Secretary. Handlers cannot complain against such order: *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, at 572. Producers cannot recover against handlers in any contract action, because the latter are merely discharging their obligations under an order which they have no standing to question: part of the price has been taken away by the respondent Secretary due to handlers' "submitting to this order because they had no power to resist it", as in *McLemore* v. *Louisiana State Bank*, 91 U. S. 27. If the rule were otherwise, handlers would be in the remarkable position of having to pay twice—once to producers under the contract and once to the Secretary's cooperative corporations under the unlawful order. Thus, the Secretary has interfered with lawful performance of these contracts for the sale of milk: if he decreed that payment shall be made for producers' milk by the handler's using half of the price to subsidize or build a private milk plant (or a post office) without authority, his interference would be no more effective and he certainly could not escape attack merely because the contract price was prohibited by law from falling below a prescribed minimum. In so appropriating part of the price he is no less above challenge than when he appropriates part of the milk, as in *Scully* v. *Bird*, 204 U. S. 481, *supra*.

A contract for the sale of milk at the lawful minimum price, though the minimum be a benefit to producers, re-

mains a contract with every right except such as Congress saw fit to modify or regulate in the public interest.[5] Congress, by failing to authorize producers to petition for administrative review, certainly did not show intention to destroy the property rights which producers hold in their contracts for the sale of milk as against unlawful interference by third persons, whether private persons or persons purporting to act officially but exceeding authority. Yet this is the holding of the court below; and "to take away all remedy for the enforcement of a right is to take away the right itself": *Poindexter* v. *Greenhow*, 114 U. S. 270, at 302.

(d) When the respondent Secretary unlawfully compels handlers to turn over to his agent part of the monies which should comprise payments to producers for milk, by certifying without authority that certain corporations are instead entitled to part of the lawful minimum classification price, the monies thus in the hands of the Secretary through his agent should be impressed with a trust in the petitioners' favor. Here again, the issue is one of property right—an equitable ownership in property—rather than of statutory privilege. Where a fund held by a public officer is a trust by statute or a trust ex maleficio, an action by the beneficiary may lie against him as against a private person to protect the fund from dissipation: *Mellon* v. *Orinoco Iron Co.*, 266 U. S. 121; *Z. & F. Assets Corp.* v. *Hull, et al.*, 311 U. S. 470; *Osborn* v. *Bank of United States*, 22 U. S. 738, at 836; see *Thompson* v. *Deal*, 92 F. (2d) 478, similarly involving a producer pool. This Court sustained the constitutionality of the Producer Set-

[5] In *Ickes* v. *Fox*, 300 U. S. 82, beneficiaries contracting under the Reclamation Act and supplementary legislation had standing to restrain enforcement of an order purportingly issued thereunder, wrongfully limiting their water rights; in *Sante Fe Pacific R. R. Co.* v. *Lane, Secretary*, 244 U. S. 492, the beneficiary of a land grant had standing to protest against an unlawful charge by the grantor government for surveying it. These cases do not involve benefits in the sense of pure donations or gifts; neither does the instant case, wherein producers must give valuable consideration by supplying milk in order to obtain any price benefit. See also citations below note 7.

tlement Fund in *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, upon representation by the Government that such fund belonged to producers: its brief then urged that the Fund is "a pool created by all producers" (p. 27); that the Fund is "money which represents a part of the value of the milk delivered by producers" (p. 28); that the Fund "is money which should be distributed among the producers. * * * When it is paid they (the handlers) are deprived of nothing. They have merely served as a conduit for its distribution among producers" (p. 125); that "cooperative payments * * * are paid out of monies due to producers" (p. 157). Order No. 4 itself[6] shows ownership of the Fund in producers. The petitioners' equitable interest in the Fund gives them standing to protect it; citations *supra*.

Producers do not lose this standing merely because they may benefit from the Fund; by hypothesis, every trust has a beneficiary.[7] The view below that producers' "standing to sue is no different, and no greater, than is that of citizens generally" is a view closed to the reality that the milk which created the Fund and the monies which comprise it came from the producers alone.[8]

This Court sustained the Producer Settlement Fund under the Fifth Amendment as created by Congressional action "reasonably adapted to allow regulation of the interstate market": *United States* v. *Rock Royal Co-opera-*

[6] Sec. 904.11(d), that any funds collected by the administrator "above the amounts necessary" (and it is safe to assume that this means "lawfully necessary") "shall be distributed to the contributing handlers and producers in an equitable manner." Sec. 904.8(b)(3) of the Order requires handlers to pay for milk "to producers, through the market administrator * * *," who therefore clearly is a mere conduit for producers.

[7] In *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, it was strongly indicated that shippers (rather than carriers) had standing to complain respecting the Recapture Fund, although obviously beneficiaries of the railroad rate orders creating it. See also cases *supra*, note 5. In any event, the benefit (under the Act and order) of which the validity is not questioned is "clearly separable from the sections here challenged"; *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, at 81.

[8] The Fund is not part of the general funds of the United States; cf. *Massachusetts* v. *Mellon*, 262 U. S. 447; but see *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20.

tive, Inc., 307 U. S. 533, at 572. It follows that if, as alleged, the Secretary's unlawful deductions cause the Fund to acquire monies wrongfully certified for payment to private corporations without Congressional authority, such Fund is *not* the kind sustained earlier by this Court; it is a creature of the Secretary instead of Congress. In short, by accumulating monies in the Producer Settlement Fund without statutory authority for payment to private interests, which monies are otherwise payable to producers[9] under lawful provisions of Order No. 4, the Secretary is (a) lawfully interfering with performance of producers' contracts; (b) coming into possession[10] through a Producer Settlement Fund of monies due to producers thereunder; (c) administering a fund which lacks constitutional or statutory authority, and which petitioner producers as rightful owners have standing to protect.

(e) Granted standing to sue, petitioners will readily establish that the Secretary acted beyond his authority in Sec. 904.9(a)-(d) and Sec. 904.7(b)(5) of Order No. 4 as

[9] A greatly simplified but accurate description of the Fund in operation and of producers' injury under the challenged provision is as follows:

If a handler buys from producers exactly 100 lbs. of milk exclusively for use in Class I, with a minimum class price of $3.40—and if another handler similarly buys Class II milk at $2.20—the Act requires the blended price to be computed in such manner that it amounts to $2.80; the first handler is obligated to pay all producers $3.40 by paying his own producers $2.80 and by paying 60 cents to the Market Administrator for the Producer Settlement Fund thus created.

However, if—by making some illegal or unauthorized deduction—the Secretary computes the blended price 1 cent lower than he should under the Act, producers dealing with such handler would receive only $2.79. Therefore the fact of injury is simple, precise and direct, producers receiving a lower price. Furthermore, such handler still remains subject, under the Act and Order, to pay the minimum price of $3.40; so the balance of 61 cents (60 + 1) is paid into the Fund. Assuming that the other handler's producers also sold 100 lbs. of milk, and adding this to the above 100 lbs., other producers could only be paid 59 cents instead of 60 from the Fund because 2 cents (1 cent per 100 lbs.) so obtained are paid out as the cooperative payments here under attack: Again the fact of injury is simple, precise and direct, producers receiving a lower price, due to the Fund acquiring part of their price.

As succinctly stated in the *Rock Royal Case*, at 561, "if the deductions from the fund are small or nothing, the patron [producer] receives a higher uniform price"; thus, the injury to the petitioners varies directly with the amount of the deduction herein.

[10] See above, note 9.

amended, directing payments out of the Producer Settlement Fund to cooperative corporations therein described. The Government throughout this case has failed to meet the issue upon its merits. The Act prohibits such payments: Sec. 8c(5)(E) states that milk marketing orders may provide for deductions from payments to producers for market information, weighing, sampling and testing (activities in Sec. 904.9 of the Order) "*except* as to producers for whom such services are being rendered by a cooperative marketing association." When Congress was asked to adopt a measure to cure the Secretary's lack of authority to make these payments, the bill was not enacted: Bill S. 3426, 76th Cong., 3rd Sess. (1940). *Carey* v. *Donohue*, 240 U. S. 430, at 437; *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, at 352.

It is a vast departure from the American scheme of government, to tax or charge non-members in order to finance operations by private corporations (cooperative or proprietary); hence the intention of Congress to do so will not lightly be implied: *Reinecke* v. *Gardner*, 277 U. S. 239; *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, at 80; *Burr Creamery Corp.* v. *Commissioner*, 62 F. (2d) 407, cert. den. 289 U. S. 730. With clarity, Congress has here provided for special treatment of cooperative producer associations in numerous other respects, and such differentiation from other types of business organization (not differentiation from individual producers) has been sustained in *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, at 563; but the very fact of such special expressions by Congress compels the conclusion that failure to grant express authority for the payments herein means intent not to authorize them, there being no general grant of power to the Secretary to pay monies to cooperatives: *Springer* v. *Philippine Islands*, 277 U. S. 189. Furthermore, the *Rock Royal* case sustained differentiation by Congress, rather than by administrative order.

The legislative history of the Act also defies all efforts to read into any section thereof a scintilla of Congressional intent to authorize the payments involved in this case or to prescribe any standards therefor in purpose or amount.

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, requiring that court to certify the whole record and the case herein to this Court for review and determination.

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON, GEORGE STEBBINS, FRANCIS WALSH,

Petitioners.

By HARRY POLIKOFF,
Counsel for Petitioners.

120 Broadway
New York, N. Y.